

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAR 20 2002

OFFICE OF
MANAGING DIRECTOR

Mr. Louis Zwerling
Zwerling Broadcasting System, Ltd.
2300 Portola Drive
Santa Cruz, California 95062

86-285

RE: Supplementation to Request for Reconsideration--Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA); Failure to Pay Regulatory Fee and Late Payment Penalties, KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 00000CDMC-99-034. Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 0009268835858007; Fee Control Number 00000 RROG-02-008.

Dear Mr. Zwerling:

Background

We reviewed the materials you submitted to my office on January 7, 2002 by facsimile transmission. Your facsimile cover sheet states your expectation that the appended unsigned and undated copies of the Federal Income Tax Forms, Form 1120S, for 1999 and 2000 will "justify waiving the annual fees [and] penalties for the 1999 [and] 2000 years." You also state that the Commission based the annual fee for "KSCO" on "entirely incorrect data with regard to the population served." This submission followed our decision¹ dated December 12, 2001, which denied Ms. Zwerling's request for reconsideration² on the ground that the petition failed to meet the Commission's procedural standards. For the reasons discussed below, we dismiss your request that we consider and apply the submitted information as a basis for waiver of the fees and penalties, and your challenge to the assessed fee applicable to station KSCO.

¹ Letter from Mark Reger, Chief Financial Officer to Ms. Kay Zwerling, dated December 12, 2001, subject: Request for Reconsideration--Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA); Failure to Pay Regulatory Fee and Late Payment Penalties, KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 00000CDMC-99-034. Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 0009268835858007; (47 CFR § 1.1167(b); 47 U.S.C. § 405(a) (filing a petition for reconsideration does not relieve the licensee from the requirement that full and proper payment of the underlying fee be submitted as required by the Commission's action or delegated action); 47 CFR § 1.1166(c) (waiver requests that do not include the required fees will be dismissed unless accompanied by a petition to defer payment due to financial hardship supported by documentation of the financial hardship).

² Letter from Ms. Kay Zwerling to Mr. Mark Reger, CFO, FCC, dated 13 July 2001.

Discussion

Section 5(c) of the Communications Act of 1934 and section 0.231 of the Commission's rules (47 CFR § 0.231(a)) grant this office the authority to act upon requests for waiver, reduction, or deferment of fees. Following such action, any person desiring further consideration of it must file either a petition for reconsideration or an application for review within 30 days of the date of the document.³ However, petitions or applications that do not meet the statutory requirements⁴ and the Commission's procedural rules⁵ are dismissed, as are those that are repetitious.⁶

We will not entertain any application or petition even as the licensee continues to avoid payment of the delinquent fees and assessed penalties.⁷ Even if you remedy your delinquency, we will not accept a belated attempt to submit unsigned and undated tax returns for calendar years 1999 and 2000 in support of a request for waiver based on financial hardship. You requested a waiver of the fiscal year 1999 fees on March 28, 2000, but did not demonstrate the existence of financial hardship or that a waiver would override the public interest in collecting the fees. As we informed you⁸ on June 28 and December 12, 2001, the Commission looks to the licensee's cash flow and considers whether the station lacks sufficient funds to pay the regulatory fee and maintain service to the public. Moreover, even if a station loses money, any funds paid to principals, or deductions taken for depreciation or similar items are considered funds available to pay fees. In this regard, the submitted tax returns reflect payments of salaries and wages to unidentified individuals in excess of the asserted losses. Furthermore, we stated you must demonstrate that paying the regulatory fee would affect the ability of the station to maintain service to the public, and you must demonstrate how waiver of the fees in this case overrides the public's interest to collect the fees. Never have you addressed these points.

³ 47 CFR § 1.4(b)(5) (computation of time); § 1.104 (preserving the right of review or reconsideration); § 1.106 (petitions for reconsideration).

⁴ 47 U.S.C. §§ 159(c); 405(a).

⁵ 47 CFR §§ 1.1166(c); 1.1167(b).

⁶ 47 CFR § 1.106(k)(3).

⁷ See 47 U.S.C. § 159(c)(1); 47 CFR § 1.1167(b).

⁸ Letter from Mark Reger to Mr. Michael Zwerling, dated June 28, 2001, subject: Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA); Failure to Pay Regulatory Fee and Late Payment Penalties, KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 00000CDMC-99-034; Letter from Mark Reger to Mr. Michael Zwerling, dated June 28, 2001, subject: Request for Waiver (Section 9, Regulatory Fee), KSCO-AM (Santa Cruz, CA) and KOMY-AM (La Selva Beach, CA), Fee Control Number 0009268835858007.

Mr. Louis Zwerling

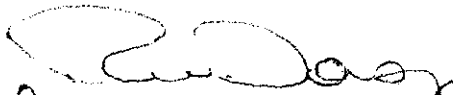
3.

Conclusion

We are dismissing your submission as repetitious because you continue to avoid paying the delinquent debt while at the same time attempting to invoke the broad, but inadequately supported, allegation of financial hardship. Moreover, generally we will not accept on reconsideration, matters presented for the first time.⁹

Because you did not pay the required fees, the delinquent debt may be transferred to the Secretary of the Treasury for collection or to the United States Department of Justice to commence a lawsuit to enforce payment, and/or to apply other administrative sanctions. 47 CFR §§ 1.1161, 1.1164, 1.1940. Zwerling Broadcasting may be charged the accompanying administrative costs in addition to the interest required by 31 U.S.C. § 3717, which accrued from June 28, 2001, and the penalty of 6 percent per year of the unpaid amount. If you have any questions concerning this letter, you may write me at the Commission or call the Revenue and Receivables Operation Group at (202) 418-1995.

Sincerely,



Mark A. Reger
Chief Financial Officer

⁹ 47 CFR § 1.106(c).

00000RR06-02-008

1/18/02
jw**AM 1080**
KSCO**AM 1340**
KOMY

2300 Portola Drive, Santa Cruz, CA 95062 831-475-1080 fax 831-475-2967

DATE: 1/7/02
 TO: Regina Dorsey
 RE: 1999 & 2000 Federal Tax Forms
 FAX: 831-475-2843

PAGES: 12 (including cover 2)
 FROM: Louis Zwerling
 PHONE: 831-475-1080
 831-426-4866 (home)

Urgent

For Review

Please Comment

Please Reply

Please Recycle

Dear Ms. Dorsey,

As per our conversation today, here are
 1999 & 2000 ZWERLING Broadcasting Tax Forms
 which describe the finances of KSCO & KOMY AM
 Stations.

I hope this will suffice to justify waiving the
 Annual Fees & penalties for the 1999 & 2000 years.

The annual fee of \$3750 for KSCO is
 based on entirely incorrect data with regard to
 population served which you have listed on
 Attachment J as 1,410,323. Our population
 served is at most 425,000.

I will call to confirm receipt of this fax.
 Thanks for your attention & consideration

Sincerely, L. Zwerling